

TITLE 4.
CALIFORNIA GAMBLING CONTROL COMMISSION

**NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING
CONCERNING
INTERIM GAMBLING LICENSES
CGCC-GCA-2011-01-R**

NOTICE IS HEREBY GIVEN that the California Gambling Control Commission (Commission) is proposing to take the action described in the Informative Digest. Any interested person, or his or her authorized representative, may present statements or arguments orally or in writing relevant to the proposed regulatory action at a public hearing to be held at **10:00 a.m. on September 28, 2011**, at 2399 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission at any time during the 45-day public comment period, which closes on August 29, 2011. Written comments will also be accepted at the above referenced hearing.

Written comments may be sent by mail, facsimile, or e-mail, directed to one of the individuals designated in this notice as a contact person. To be eligible for the Commission's consideration, all written comments must be **received at its office no later than 5:00 p.m. on August 29, 2011**, or provided to the Commission at the above referenced hearing. **Comments sent to persons and/or addresses other than those specified under Contact Persons, or received after the date and time specified above, will be included in the record of this proposed regulatory action, but will not be summarized or responded to regardless of the manner of transmission.**

ADOPTION OF PROPOSED ACTION

After the close of the public comment period, the Commission, upon its own motion or at the instance of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 19811, 19823, 19824, 19825, 19826, 19840, 19841, 19850, 19851, 19853, 19855, 19857, 19859, 19869 and 19870 of the Business and Professions Code, and to implement, interpret or make specific sections 19824, 19841(s) and 19870(b) of the Business and Professions Code,¹ the Commission is proposing to adopt the following changes to Chapter 6 of Division 18 of Title 4 of the California Code of Regulations:

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

INTRODUCTION:

The California Gambling Control Commission (Commission) is proposing to adopt regulations to implement legislation² that requires the Commission to establish procedures, by December 31, 2011, that would allow a gambling enterprise to continue to operate subsequent to the occurrence of specified events. Those events include the death, insolvency, foreclosure, receivership, or incapacity of an owner-licensee.

SPECIFIC PROPOSAL:

The proposed action would adopt Section 12349 in Chapter 6 of Division 18 of Title 4 of the California Code of Regulations. The proposed regulations would establish a process for the issuance of interim gambling licenses, including a notification requirement, an application process, timelines, criteria and interim license conditions. The interim gambling license would allow gambling operations to continue while the Commission considers the regular gambling license application of the successor in interest to the owner-licensee.

EXISTING LAW:

Business and Professions Code section 19811, subdivision (b), provides the Commission with the primary jurisdiction over persons that conduct gambling operations within the state.

Section 19823 assigns the Commission with the responsibility of assuring that gambling licenses are not issued to persons whose operations are inimical to public health, safety or welfare.

Section 19824 provides the Commission with the power to require persons to apply for a gambling license, and the power to grant temporary licenses, with terms and conditions.

Section 19825 allows the Commission to utilize the administrative adjudication process provisions of the Government Code to litigate the denial of gambling licenses.³

Section 19826, subdivision (a), assigns the Bureau of Gambling Control (Bureau) with the responsibility to investigate the qualifications of license applicants and make recommendations to the Commission regarding the issuance or denial of a gambling license.

¹ All statutory references hereafter are to the Business and Professions Code, unless otherwise specified.

² Chapter 233, Statutes of 2009 (AB 293, Mendoza)

³ Government Code, Title 2, Division 3, Part 1, Chapter 5, section 11500 et seq.

Section 19840 allows the Commission to adopt regulations for the administration and enforcement of the Act.

Section 19841, subdivision (a), requires the Commission to adopt regulations that prescribe the method, form and information to be furnished in the application for a gambling license.

Section 19841, subdivision (s), requires the Commission to adopt regulations (by December 31, 2011) that provide procedures, criteria and timelines for the processing and approval of temporary or interim licenses, so that a successor in interest can continue gambling operations in case of the death, insolvency, foreclosure, receivership or incapacity of a licensee.

Section 19850 requires every person who owns, operates or conducts a gambling enterprise to apply for and maintain a gambling license. Further, this section requires that any person who receives any compensation or reward, or any percentage or share of the money played from a gambling operation, must apply for and maintain a gambling license.

Section 19853, subdivision (a), allows the Commission to adopt regulations that require the licensure of any person who has the power to exercise significant influence over a gambling operation.

Section 19855 prohibits a person from conducting gambling operations without first obtaining a gambling license.

Section 19857 prohibits the issuance of a gambling license unless the Commission is satisfied that the applicant is a person of good character, honesty, integrity, and whose prior activities do not enhance the dangers of unfair gambling.

Section 19859 requires the Commission to deny a license to a person who has been convicted of a felony, any misdemeanor involving dishonesty or moral turpitude within the previous 10 years, or who has been associated with criminal profiteering or organized crime.

Section 19869 allows an applicant to withdraw an application for a gambling license, but allows the Commission to deny the withdrawal request and have the Bureau go forward with its investigation when it would be in the best interests of the public and the policies of the Act.

Section 19870 allows the Commission to grant or deny a license application, after considering the recommendations from the Bureau. This section also allows the Commission to limit or place restrictions upon a license when it would be in the public interest and consistent with the policies of the Act.

EFFECT OF REGULATORY ACTION:

This proposed action would make the following specific changes to Chapter 6 of Division 18 of Title 4 of the California Code of Regulations:

Adopt Section 12349. Interim Licenses for Continued Operation Following Qualifying Events; Criteria; Processing Times; Conditions.

- Subsection (a) would provide definitions for certain words and terms that are unique to Section 12349, as specified.
- Subsection (b) would allow gambling operations to continue following a qualifying event, provided that an owner or licensed person affiliated with the gambling enterprise assumes control of the gambling operations, the Commission is notified of the qualifying event within 10 days, and the new owner submits a request for an interim gambling license, as specified. This regulation would require that gambling operations cease in the event that the interim license request is denied or withdrawn.
- Subsection (c) would establish the application process for an interim gambling license. The process includes a requirement that the new owner submit the following to the Commission within 30 days of the qualifying event: a complete application package for a regular gambling license; a written request for an interim license; and a document that evidences the qualifying event. The 30-day application submission requirement could be extended by the Commission or the Executive Director if the new owner can demonstrate good cause. The length of any extension would be at the discretion of the Commission or Executive Director, based on the specific facts and circumstances of each request.
- Subsection (d) would specify that a request for an interim gambling license is ancillary to, and concurrent with, an application for a regular gambling license.

This subsection sets up various timelines for the interim license application process. It allows Commission staff 10 days to determine the completeness of a request for an interim gambling license. If the request is incomplete, this regulation allows the applicant another 10 days to send the additional documents or information. If the applicant fails to send the requested documents or information, the application would be considered abandoned. When a request is considered complete, the Commission would have 60 days to schedule and conduct a meeting to grant or deny the request for an interim license.

This subsection would require that gambling operations be terminated if an application for an interim license is abandoned by the applicant and no other person has applied for or obtained an interim or regular gambling license.

This subsection would also prohibit the approval of a request for an interim gambling license if any factor is disclosed that would disqualify the applicant for a regular license.

- Subsection (e) would apply three criteria to the processing of a request for an interim gambling license. First, in the unlikely event that a regular license is issued before the interim license, the request for an interim license would be deemed withdrawn. Second, if an applicant withdraws an application for a regular gambling license before the Bureau's recommendation is made, the request for an interim license would also be deemed

withdrawn. Finally, the denial or cancellation of a request for an interim gambling license would not affect the continued processing of the regular license application.

- Subsection (f) would apply the following conditions to the issuance of an interim gambling license:
 - (1) An interim gambling license would be invalidated upon issuance or denial of the corresponding regular license.
 - (2) The term of an interim gambling license would be determined by the Commission and based in part on the time necessary to process and consider the application for a regular gambling license.
 - (3) The issuance of an interim gambling license would not obligate the Commission to grant the regular license. Issuance of a regular license would be subject to specified criteria.
 - (4) The issuance of an interim gambling license would not create a vested right to a regular gambling license or an extension of the interim license.
 - (5) The issuance of an interim gambling license would not change the qualification requirements for a regular license.
 - (6) The holder of an interim gambling license would be required to notify the Commission within 30 days of hiring a new key employee or specified contractor.
 - (7) The authorization of *additional* permanent tables would be prohibited during the term of an interim gambling license.
 - (8) The holder of an interim gambling license would be required to pay all the applicable annual fees associated with a regular gambling license.
 - (9) The holder of an interim gambling license would be required to comply with the Act and its regulations.
 - (10) The proceeds of the gambling enterprise would be required to be held in an escrow account and not disbursed until the Commission approves the ownership transfer and issues a regular gambling license to the new owner(s). The payment of taxes, operating expenses, preexisting obligations, preexisting dependent support and any other distributions approved by the Commission would be exempt from this restriction.
 - (11) Allows the Commission to impose additional conditions upon individual applicants for an interim gambling license to address particular factual situations.
 - (12) In requesting an interim gambling license, the applicant would agree to the foregoing conditions.
- Subsection (g) would require the new owner of a gambling enterprise to provide the Commission with written notification if he or she intends to sell their ownership interest without first obtaining an interim or regular gambling license.
- Subsection (h) would establish a process for the cancellation of an interim gambling license by the Commission when it is determined that the license holder is not qualified to hold a

gambling license. The process would include an option for the license holder to request an evidentiary hearing, pursuant to existing regulations.⁴

- Subsection (i) would insure that the interim gambling license process does not preclude the Commission from issuing temporary licenses, as authorized by Business and Professions Code section 19824(f).

FISCAL IMPACT ESTIMATES

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE:

None.

NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES:

None.

MANDATE IMPOSED ON ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT:

None.

COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT:

None.

IMPACT ON BUSINESS:

The Commission has made an initial determination that the adoption of these regulations would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action merely clarifies and establishes in regulation, existing processes and procedures as mandated by section 19841, subdivision (s). No new costs or requirements are imposed.

The following studies/relevant data were relied upon in making the above determination:

None.

IMPACT ON JOBS/NEW BUSINESSES:

The Commission has determined that this regulatory proposal will not have a significant impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California.

⁴ California Code of Regulations, Title 4, Section 12050, subsection (b)

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON HOUSING COSTS:

None.

EFFECT ON SMALL BUSINESS:

The Commission has determined that the proposed regulatory action may affect small businesses, if any affected cardroom would qualify as a small business.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Commission would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action described in this Notice.

INITIAL STATEMENT OF REASONS, INFORMATION AND TEXT OF PROPOSAL

The Commission has prepared an Initial Statement of Reasons and the exact language for the proposed action and has available all the information upon which the proposal is based. Copies of the language and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Commission at 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231.

AVAILABILITY AND LOCATION OF THE RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS

All the information upon which the proposed action is based is contained in the Rulemaking File that will be available for public inspection and copying at the Commission's office throughout the rulemaking process. Arrangements for inspection and/or copying may be made by contacting the backup contact person named below.

Upon its completion, the Final Statement of Reasons will also be available. A copy of the Final Statement of Reasons may be obtained, once it has been prepared, by making a written request to one of the contact persons named below or by accessing the Commission's Web site listed below.

CONTACT PERSONS

All comments and inquiries concerning the substance of the proposed action should be directed to the following **primary** contact person:

James B. Allen, Regulatory Actions Manager
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231
Telephone: (916) 263-4024
Fax: (916) 263-0452
E-mail: Jallen@cgcc.ca.gov

Requests for a copy of the Initial Statement of Reasons, proposed text of the regulation, modified text of the regulation, if any, or other technical information upon which the proposed action is based should be directed to the following **backup** contact person:

Shannon George, Research Program Specialist I
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231
Telephone: (916) 263-4904
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WEB SITE ACCESS

Materials regarding this proposed action are also found on the Commission's Web site at www.cgcc.ca.gov.